

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, NC
JAN 14 2013

US District Court
Western District of NC

UNITED STATES OF AMERICA, *et. al, ex rel.*
LYNN E. SZYMONIAK,

Plaintiffs,

v.

ACE SECURITIES CORPORATION, *et al.*,

Defendants.

CIVIL NO. 3:10CV575-RJC
UNDER SEAL

MEMORANDUM IN SUPPORT OF
RELATOR'S MOTION TO TRANSFER
THIS CASE TO THE DISTRICT OF SOUTH CAROLINA

Pursuant to 28 U.S.C. § 1404(a), because transfer will serve the interests of justice, because this case could have been brought in the District of South Carolina, with the consent of the United States, and for the reasons stated in this memorandum in support, the Relator moves to transfer this action to the United States District Court for the District of South Carolina so that it can be heard with the related case: *United States et al. ex rel. Syzmoniak, v. American Home Mortgage Servicing, Inc., et al.*, Civil No. 0:10-cv-01465-JFA (D.S.C.) (J. Anderson).

On November 12, 2010, the Relator, a resident of Florida, filed this *qui tam* complaint under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, alleging that defendants, ACE SECURITIES CORPORATION, ALLY FINANCIAL INC., AURORA LOAN SERVICES LLC, BANK OF AMERICA, BAC HOME LOANS SERVICING, LLP, BANC OF AMERICA MORTGAGE SECURITIES, INC., BAYVIEW LOAN SERVICING LLC, CALIFORNIA RECONVEYANCE COMPANY, CARRINGTON MORTGAGE SERVICES, CHASE HOME

FINANCE, CITIMORTGAGE INC., DOCX, LLC, HOME Q SERVICING CORPORATION, CAPITAL REAL ESTATE, INC., HSBC MORTGAGE SERVICES INC., LENDER PROCESSING SERVICES, INC., LITTON LOAN SERVICING, NATIONWIDE TITLE CLEARING, OCWEN LOAN SERVICING, ONEWEST BANK, ORION FINANCIAL GROUP, PROMMIS SOLUTIONS, SECURITIES CONNECTION, INC., SELECT PORTFOLIO SERVICES, INC., VERICREST FINANCIAL INC., WELLS FARGO HOME MORTGAGE and JOHN DOE CORPORATIONS 1 THROUGH 100, violated the False Claims Act. About half a year before bringing this action, on May 31, 2012, Relator filed a False Claims Act *qui tam* complaint alleging claims identical to those asserted here, against fifteen defendants, in the United States District Court for the District of South Carolina. *United States et al. ex rel. Syzmoniak, v. American Home Mortgage Servicing, Inc., et al.*, Civil No. 0:10-cv-01465-JFA (D.S.C.). Defendants WELLS FARGO HOME MORTGAGE and the BANK OF AMERICA CORPORATION are defendants in both the South Carolina and the Western District of North Carolina cases. The remaining defendants in South Carolina are not before the Court in this action.¹

In both cases, Relator alleges that when defendants formed Residential Mortgage Backed Securities they failed to prepare or obtain mortgage assignments or note endorsements, and that defendants charged improper costs to trusts, falsified documents, misrepresented corporate authority, forged signatures, and impaired the value of the collateral in trusts. Relator further

¹ The defendants in South Carolina are AMC Mortgage Services, Inc. s/k/a Citi Residential Lending, Inc., a/k/a Citimortgage, Inc., American Home Mortgage Servicing, Inc., Bank of America Corporation as successor in interest to Lasalle Bank, the Bank of New York Mellon Corporation, Citibank National Association, Deutsche Bank National Trust Company, Deutsche Bank Trust Company Americas, DOCX, LLC, HSBC Bank USA, National Association, J.P. Morgan Chase Bank National Association, Lender Processing Services, Inc., Saxon Mortgage Services, Inc., U.S. Bank National Association, Wells Fargo Bank National Association, and Wells Fargo Home Mortgage D/B/A America's Servicing Company.

alleges that defendants made improper claims for Federal Housing Administration, Veterans Administration and Department of Agriculture insurance on foreclosed mortgages.

According to Relator, the United States purchased defective securities in three different ways: 1) as part of the Federal Reserve's Maiden Lane transactions; 2) in Treasury's Public Private Investment Program (PPIP); and 3) in the Federal Reserve's and the Treasury's Agency RMBS Purchase Programs. Relator alleges that knowing misrepresentations made by defendants in SEC filings and transactional documents related to the RMBS trusts caused the United States to buy defective securities in these programs.

In both cases, Relator asserts claims under the federal False Claims Act, 31 U.S.C. §§ 3729-3732 (FCA), and under the false claims acts of seventeen states and three municipalities,² against defendants that served as trustees, servicers and depositors in connection with RMBS.

Although many of the defendants in the two cases are different, legal and factual issues will overlap. Judicial efficiency and savings in the time and effort for all involved will be achieved by consolidating these two cases.

Pursuant to the False Claims Act a *qui tam* action can be brought "in any judicial district in which defendant or, in the case of multiple defendants, any one defendant can be found, resides or transacts business, or in which any act proscribed by section 3729 occurred." 31 U.S.C. § 3732(a). 28 U.S.C. § 1404(a) provides that "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other

² California, Delaware, Florida, Hawaii, Illinois, Indiana, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Virginia, the District of Columbia, Chicago and New York City.

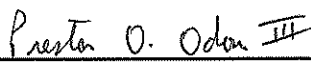
district or division where it might have been brought." Because some or all of the defendants in this case transact business in South Carolina, Relator could have brought this case there.

The Relator believes that it is in the interests of justice for this case to be transferred to South Carolina to be consolidated with the case already pending in that District.

The United States agrees with Relator's request to transfer of the case to the District of South Carolina.

WHEREFORE, Relator respectfully requests that this case be transferred to the District of South Carolina.

Respectfully submitted,


for _____
William K. Diehl, Jr.
James, McElroy & Diehl, P.A.
600 South College Street
Charlotte North Carolina 28202
Telephone: (704) 372-9871
Facsimile: (704) 333-5508
bdiehl@jmdlaw.com

Richard A. Harpootlian
RICHARD A. HARPOOTLIAN P.A.
Richard A. Harpootlian, Esq.
Federal Bar No.: 1730
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202
Telephone: (803) 252-4848
Facsimile: (803) 252-4810
rah@harpootlianlaw.com

JANET, JENNER & SUGGS, LLC

Howard Janet, Esq.
Woodholme Center
1829 Reisterstown Road, Suite 320
Baltimore, MD 21208
Telephone: (410) 653-3200

JANET, JENNER & SUGGS, LLC

Kenneth M. Suggs, Esq.
500 Taylor Street
Columbia, SC 29201
Telephone: (803) 726-0050

GRANT & EISENHOFER P.A.

Jay W. Eisenhofer, Esq.
James J. Sabella, Esq.
485 Lexington Avenue
New York, NY 10017
Telephone: (646) 722-8500

GRANT & EISENHOFER P.A.

Reuben Guttman, Esq.
1920 L Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 386-9500

Attorneys for Relator Lynn E. Szymoniak

January 14, 2013

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2013, the foregoing **MEMORANDUM IN SUPPORT OF RELATOR'S MOTION TO TRANSFER THIS CASE TO THE DISTRICT OF SOUTH CAROLINA** was served on the following persons listed below via United States Mail, First Class:

U.S. Attorney General Eric H. Holder
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Deputy Director Joyce R. Branda
U.S. Department of Justice
Commercial Litigation Branch, Civil Fraud
601 D Street, N.W.
Washington, DC 20530

William Edgar
Senior Trial Counsel
U.S. Department of Justice
Civil Division
601 D Street, N.W.
Washington, DC 20530

U.S. Attorney Anne M. Tompkins
Western District of North Carolina
c/o AUSA Donald H. Caldwell, Jr.
227 West Trade Street, Room 1650
Charlotte, NC 28202

U.S. Attorney William N. Nettles
District of South Carolina
c/o AUSA Fran Trapp
1441 Main Street, Suite 500
Columbia, SC 29201

Attorney General Kamala D. Harris
State of California
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Deputy Attorney General Rick Aker
State of California
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Attorney General Joseph R. Biden, III
State of Delaware
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801

Attorney General Pamela J. Bondi
State of Florida
PL-01 The Capitol
Tallahassee, FL 32399-1050

Russell S. Kent
Special Counsel for Litigation
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399

Attorney General David M. Louie
State of Hawaii
c/o Michael S. Vincent
Office of the Attorney General
425 Queen Street
Honolulu, HI 96813

Attorney General Lisa Madigan
State of Illinois
c/o Malini Rao
Office of the Attorney General
Chicago Main Office
100 West Randolph Street
Chicago, IL 60601

Attorney General Greg Zoeller
State of Indiana
c/o David A. Paetzmann
Office of the Attorney General
Indiana Government Center South
302 West Washington Street
Indianapolis, IN 46204

Inspector General David Thomas
State of Indiana
315 West Ohio Street, Room 104
Indianapolis, IN 46204

Attorney General Martha Coakley
Commonwealth of Massachusetts
c/o Peter Leight
Office of the Attorney General
One Ashburton Place
Boston, MA 02108-4765

Attorney General Lori Swanson
State of Minnesota
c/o Scott H. Ikeda
Office of the Attorney General
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

Attorney General Tim Fox
State of Montana
Montana Department of Justice
Post Office Box 201401
Helena, MT 59620-1401

Attorney General Catherine Cortez Masto
State of Nevada
c/o Ernest Figuero
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Attorney General Michael A. Delaney
State of New Hampshire
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301

Attorney General Jeffrey S. Chiesa
State of New Jersey
Office of the Attorney General
Post Office Box 080
Trenton, NJ 08625-0080

Attorney General Gary King
State of New Mexico
c/o Seth Cohen
Office of the Attorney General
408 Galisteo Street, Villagra Building
Santa Fe, NM 87501

Attorney General Eric T. Schneiderman
State of New York
Office of the Attorney General
The Capitol
Albany, NY 12224

Thomas Teige Carroll
Deputy Bureau Chief
Investor Protection Bureau
Office of the Attorney General
120 Broadway, 23rd Floor
New York, NY 10271

New York State Office of the Attorney General
To the attention of: Taxpayer Protection
Managing Clerk Office
120 Broadway, 24th floor
New York, NY 10271

Attorney General Roy A. Cooper
State of North Carolina
North Carolina Department of Justice
114 West Edenton Street
Raleigh, NC 27602

Attorney General Peter Kilmartin
State of Rhode Island
c/o James R. Lee
Office of the Attorney General
150 South Main Street
Providence, RI 02903

Attorney General Kenneth T. Cuccinelli, II
State of Virginia
c/o Ms. Erica Bailey
Office of the Attorney General
900 East Main Street
Richmond, VA 23219

Attorney General Irvin B. Nathan
District of Columbia
Office of the Attorney General
441 4th Street, NW, Suite 1100S
Washington, DC 20001

City of Chicago, Law Department
Corporations Counsel
121 North LaSalle Street, Room 600
Chicago, IL 60602

Eric Proshansky
Deputy Chief, Affirmative Litigation Division
New York City Law Department
100 Church Street
New York, NY 10007

for Preston O. Odom IV
William K. Diehl, Jr., NC State Bar # 1187
James McElroy & Diehl, PA
600 South College Street
Charlotte, North Carolina 28202
704-372-9870 (telephone)
704-333-5508 (facsimile)
BDiehl@jmdlaw.com (email)